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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN JOSE DIVISION

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15 The NVIDIA GPU Litigation
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Case No. C 08-04312 JW (HRL)

**STIPULATED PROTECTIVE
ORDER REGARDING
CONFIDENTIAL DOCUMENTS**

(MODIFIED BY THE COURT)

1 The parties to this consolidated action, captioned *The NVIDIA GPU Litigation*, recognize
2 that the case may involve or is likely to involve information of parties and non-parties from
3 whom discovery may be sought – that, under applicable law, is confidential. In order to protect
4 the confidential information obtained by the parties in connection with the consolidated cases
5 comprising *The NVIDIA GPU Litigation* and to ensure that documents produced in the litigation
6 are not used or disclosed except in connection with the litigation, the parties, through their
7 counsel of record, hereby stipulate and agree as follows:

8 A. Any party or non-party may designate as “Confidential,” as set forth herein, any
9 document or information that that party or witness considers in good faith to contain non-public,
10 confidential, trade secret, proprietary, or private financial information subject to protection under
11 applicable law (hereinafter referred to as “Confidential Information”).

12 B. No information, whether designated Confidential or not, may be used for any
13 purpose other than the prosecution or defense of (i) *The NVIDIA GPU Litigation*, or (ii) any other
14 action or dispute that has been or subsequent to the entry of this order is related to and
15 consolidated with *The NVIDIA GPU Litigation* (the actions and proceedings described in (i) and
16 (ii) are referred to herein collectively as “the Actions”).

17 C. The provisions of this Protective Order are in addition to the restrictions set forth
18 in the Order of this Court entered on May 11, 2009 instituting a discovery wall.

19 D. A party or non-party may designate a document produced by it, which party or
20 witness considers in good faith to contain Confidential Information, by marking the document
21 “Confidential.”

22 E. A party or non-party may designate information disclosed by it during a deposition
23 or in response to written discovery that that party or witness considers in good faith to contain
24 Confidential Information by so indicating in said responses or on the record at the deposition.
25 Additionally a party may designate in writing, within 30 days after receipt of said responses or of
26 the deposition transcript for which the designation is proposed, that specific pages of the
27 transcript (or portions of the videotape) and/or specific responses be treated as Confidential
28 Information. All costs associated with the preparation of separate confidential and non-

1 confidential transcripts and videotapes or of executing procedures for denominating Confidential
2 Information in transcripts as referenced in this Section shall be borne by the designating party
3 who shall also arrange for separate payment for such services through the service provider(s).

4 F. Any Confidential Information that is inadvertently produced without written notice
5 or identification as to its confidential nature may be so designated in writing by the producing
6 party after the realization that the Confidential Information has been produced without such
7 designation. However, until the discovery materials are designated Confidential as set forth
8 above, the parties shall be entitled to treat the material as non-confidential. Upon designation,
9 such Confidential Information shall then be treated as Confidential in accordance with the
10 provisions of this Order.

11 G. Any non-designating party may object to any confidentiality designations or any
12 proposed confidentiality designations in writing or on the record. Upon such an objection, the
13 parties shall follow the procedures described in paragraph K below. After any confidentiality
14 designation is made according to the procedures set forth in paragraphs D, E, or F, the designated
15 documents or information shall be treated as confidential until the objection is resolved according
16 to the procedures described in paragraph K below.

17 H. Except with the prior written consent of the party or non-party designating
18 documents or other information confidential or upon prior order of this Court obtained upon
19 notice to such other counsel, Confidential Information shall not be disclosed to any person other
20 than:

21 1. Counsel of record for the respective parties to the Actions, including in-
22 house counsel, co-counsel or insurance counsel;

23 2. Employees of such counsel assisting in the conduct of the Actions for use
24 in accordance with this stipulation and order;

25 3. The parties to the Actions (including their employees and affiliates);

26 4. Consultants or experts retained for the prosecution or defense of the
27 Actions, provided that each such consultant or expert shall have executed a copy of the
28 Certification annexed to this Order (which shall be retained by counsel to the party so disclosing

1 the Confidential Information) before being shown or given any Confidential Information;

2 5. Any authors of the Confidential Information and any individuals shown to
3 have been an original recipient of the Confidential Information;

4 6. The Court, court personnel, and court reporters in the Actions;

5 7. Any mediator or arbitrator retained by any two or more parties to the
6 Actions;

7 8. Any insurers (including their employees and affiliates) of NVIDIA,
8 provided that each insurer shall have executed a copy of the Certification annexed to this Order
9 before being shown or given any Confidential Information;

10 9. Mock jurors and related service providers, provided that each juror and
11 related service provider shall have executed a copy of the Certification annexed to this Order
12 before being shown or given any Confidential Information;

13 10. Persons engaged by any counsel or party to the Actions to photocopy,
14 image, or maintain the Confidential Information;

15 11. Witnesses (other than persons described in paragraph H(5)). A witness
16 shall be requested to sign the Certification before being shown Confidential Information. Any
17 witness who will not sign the Certification as requested may nevertheless be shown Confidential
18 Information only in a deposition (or at trial as provided for in paragraph O). At the request of any
19 party, the portion of the deposition transcript involving the Confidential Information shall be
20 designated "Confidential" pursuant to paragraph E above. Witnesses who will not sign the
21 Certification as requested but who are shown Confidential Information at a deposition shall not be
22 allowed to retain copies of the Confidential Information;

23 12. Other persons only (i) after notice to all parties and upon order of the
24 Court, or (ii) upon written consent of the producing party. Notwithstanding the foregoing, except
25 as provided in the Order of this Court entered on May 11, 2009 instituting a discovery wall, no
26 Confidential Information disclosed by a party or non-party in this case may under any
27 circumstances be provided by the recipient(s) thereof, either directly or indirectly, through written
28 or oral communication, to any party or counsel of record, or any other person or entity

1 representing any party that was previously, or is presently, or may in the future become, involved
2 in or connected to *In re NVIDIA Corp. Secs. Litig.*, Case No. C-08-04260-JW (N.D. Cal.) (the
3 “Securities Case”), until the earlier of the expiration of the Reform Act Stay in the Securities
4 Case, or the final disposition of the Securities Case.

5 13. Under no circumstances shall any Confidential Information or information
6 derived from Confidential Information, be communicated, directly or indirectly, to any member
7 or form of the press or media, or any other person or entity, without the prior consent of the party
8 or non-party that designated the Confidential Information.

9 I. For applications and motions to the Court on which a party submits Confidential
10 Information, all documents and chamber copies containing Confidential Information that are
11 submitted to the Court shall be filed in the manner provided by the applicable Northern District of
12 California Civil Local Rules which are currently 3-17 and 79-5.

13 J. Information produced by non-parties may be designated as “Confidential”
14 pursuant to paragraphs D, E, or F of this Order. Nothing herein shall restrict a party or non-party
15 from using or disclosing its own Confidential Information in any manner it deems appropriate.

16 K. If a party contends that any material designated as “Confidential” is not entitled to
17 confidential treatment, that party may at any time give written notice challenging the designation
18 to the party that designated the material (the “designating party”) as “Confidential.” The
19 designating party shall respond in writing to the notice challenging the designation within 5
20 calendar days, or within such other period of time as may be agreed upon by the parties. If the
21 designating party refuses to remove the “Confidential” designation, its response shall state the
22 reasons for this refusal. If the parties are unable to resolve their dispute over the designation of
23 the material, any party may move the Court for an order removing the designation or affirming
24 that the designation was properly made. In the event that any such motion is made, the party that
25 designated the material as “Confidential” shall have the burden of establishing that the material is
26 entitled to confidential treatment.

27 L. Notwithstanding any challenge to the designation of material as Confidential
28 Information, all material shall be treated as confidential and shall be subject to the provisions

1 hereof unless and until one of the following occurs:

2 1. The party or non-party who designated the material as Confidential
3 Information withdraws such designation in writing; or

4 2. The Court rules the material is not Confidential Information.

5 M. In the event any Confidential Information is subpoenaed or requested during the
6 pendency of any of the Actions by any court, regulatory, administrative, law enforcement or
7 legislative body or any person or litigant purporting to have authority to subpoena or request such
8 information, including requests based on any state or federal Freedom of Information Act, notice
9 will be given to the designating party or non-party upon receipt. In addition, no Confidential
10 Information shall be so disclosed earlier than the designated date in the subpoena, so as to enable
11 the party or non-party to have a reasonable opportunity to seek appropriate relief. **Nothing in this**
order should be construed as authorizing or encouraging a party to disobey a lawful directive from another court.

12 N. All provisions of this Order restricting the communication or use of Confidential
13 Information shall continue to be binding after the conclusion of this action, unless otherwise
14 agreed to by the producing party in writing or ordered by this Court. Upon conclusion of the
15 Actions, a party in the possession of documents designated Confidential, other than that which is
16 contained in attorney work product, discovery responses, deposition transcripts and documents
17 filed with the Court, shall upon written request after termination of the actions either (a) return
18 such documents no later than 90 days after the request, to counsel for the party or non-party who
19 provided such documents, or (b) destroy such documents within 90 days upon written consent of
20 the party or non-party who provided the documents, and certify in writing within 90 days that the
21 documents have been destroyed.

22 O. The terms of this Order do not preclude, limit, restrict, or otherwise apply to the
23 use of Confidential Information at trial and will continue to apply to Confidential Information
24 unless or until such information is placed in the public record. Notwithstanding the foregoing,
25 trial of this action does not invalidate the Order entered by this Court on May 11, 2009 instituting
26 a discovery wall, nor does it affect the stay of discovery imposed in the Securities Case pursuant
27 to the automatic discovery stay provisions of the Private Securities Litigation Reform Act of
28 1995, 15 U.S.C. § 78u-4(b)(3)(B) (the "PSLRA"). Nothing herein shall preclude a party from

1 requesting that information used a trial be admitted under seal in accordance with procedures
2 established by the Court at a pretrial conference and applicable law. Moreover, NVIDIA reserves
3 its right to move for additional protection of information, whether designated confidential or not,
4 in light of the discovery stay provisions of the PSLRA, and Plaintiffs reserve the right to oppose
5 such requests.

6 P. Nothing herein shall be deemed to waive any applicable privilege or protection, or
7 to affect the ability of a party or non-party to seek relief under Federal Rule of Evidence 502 and
8 other applicable law. Except as may be expressly agreed to the contrary, NVIDIA does not
9 intend to disclose material that is subject to any applicable privilege or protection.

10 Q. This Order may be modified only by the written consent of all parties to the Order
11 and the Court, or, with respect to the Confidential Information of a specific party or non-party, by
12 the written consent of that party or non-party that designated the Confidential Information.
13 Nothing contained herein shall be construed or applied to alter or limit the rights of any party
14 under any applicable insurance policies. This Order shall not prevent any party from later
15 seeking to modify its terms or from seeking any such further provisions or relief as may be
16 deemed appropriate or desirable.

17 R. The parties will remain bound by this Order ^{The} ~~and the~~ Court shall retain jurisdiction
18 ^{for a period of six months} to enforce this Order [^] after termination of the Actions.

19 SO STIPULATED.

20 Dated: September 17, 2009

MILBERG LLP
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Telephone: (213) 617-1200
Facsimile: (213) 617-1975

24 By: /s/ Jeff S. Westerman
25 Jeff S. Westerman

26 *Interim Lead Counsel for Plaintiffs*

27 *I hereby attest that I have on file all holograph signatures for any signatures indicated by a*
28 *“conformed” signature (/s/) within this efiled document.*

1 Dated: September 17, 2009


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3 The Orrick Building
4 405 Howard Street
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6 Telephone: (415) 773-5700
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8 By: /s/ Robert P. Varian
9 Robert P. Varian

10 *Counsel for Defendant NVIDIA*

11 **PURSUANT TO STIPULATION (AS MODIFIED BY THE COURT),**
12 **IT IS SO ORDERED.**

13 Dated: September 22, 2009

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15 _____
16 HONORABLE HOWARD R. LLOYD
17 MAGISTRATE JUDGE
18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATION

I, _____, certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulated Protective Order Regarding Confidential Information dated _____, 2009, in *The NVIDIA GPU Litigation*, Case No. C 08-04312 JW (Consolidated). I have been given a copy of and have read that Order and agree to be bound by it. I understand that all such Confidential Information and copies thereof, including, but not limited to, any notes or other transcripts made therefrom, shall be maintained in a secure manner and shall be returned no later than 30 days after the termination of this action to (1) the counsel for any party or other person who provided such Confidential Information, or (2) the counsel who I have retained, or has retained me.

DATED: _____